



Australian Capital Territory

Planning and Development Amendment Regulation 2008 (No 2)

Subordinate Law SL2008-27

The Australian Capital Territory Executive makes the following regulation under the *Planning and Development Act 2007*.

Dated 26 June 2008.

ANDREW BARR
Minister

JOHN HARGREAVES
Minister



Australian Capital Territory

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made under the

Planning and Development Act 2007

1 Name of regulation

This regulation is the *Planning and Development Amendment Regulation 2008 (No 2)*.

2 Commencement

This regulation commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This regulation amends the *Planning and Development Regulation 2008*.

4 Schedule 5, new modification 5.1A

insert

[5.1A] Section 431 (2) (a) and (b)

substitute

- (a) section 446 (Power to make lease and development conditions);
- (b) section 446A (Transitional—application for development approval if lease and development condition);

5 Schedule 5, new modification 5.3A

insert

[5.3A] New section 442C

insert

442C Transitional—development application lodged on or after commencement day for estate development plan given before commencement day

- (1) This section applies to a development application if—
 - (a) the application is lodged on or after the commencement day but not later than 6 months after the commencement day; and
 - (b) the application relates to, or incorporates, a document that the planning and development authority is satisfied is an estate development plan; and

Note For considerations for when something is an estate development plan, see s (5).

- (c) the estate development plan was given to the planning and land authority before the commencement day for consideration on the basis that the plan might form the basis of a development application.
- (2) The development application may be made, and decided, in accordance with the repealed Act (including the territory plan and any other instruments under the repealed Act) as if that Act had not been repealed.
- (3) If the development application is approved, the approval—
 - (a) is taken to be a development approval under this Act (including for section 96) unless otherwise provided by subsection (4); and
 - (b) unless extended under this Act, continues in force until the time when it would have ended under the repealed Act; and
 - (c) is taken to relate to a proposal in the merit track for section 198 (2) (Deciding applications to amend development approvals).
- (4) Also, the repealed Act (including the territory plan and any other instruments under the repealed Act), and not this Act, applies in relation to any application for reconsideration, or for review, of the decision on a development application to which this section applies.
- (5) In deciding whether a document is an estate development plan, the planning and land authority must consider whether—
 - (a) the document is identified, by itself or another document, as an estate development plan; and
 - (b) at the time it was given to the authority, the document appeared to be a document to which the government publication *Guidelines for Estate Development Plans—Greenfield Land Subdivision—September 2007*, published on the public website maintained by the authority, applied; and

- (c) the document includes plans or a proposal for the subdivision of land and related infrastructure development.

Examples—related infrastructure

sewers, footpaths, street lighting

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (6) For this section, an estate development plan (the *final plan*) in relation to a development application is taken to have been given to the planning and land authority for consideration if—
 - (a) an estate development plan (the *initial plan*) was given to the authority; and
 - (b) the final plan is identifiable as a revised version of the initial plan.

6 Schedule 5, new modification 5.4A

insert

[5.4A] New section 444A

insert

444A Commencement of development approvals under repealed Act

- (1) This section applies to each of the following development approvals unless the development approval commenced before the commencement day:
 - (a) a development approval mentioned in section 442 (Transitional—applications lodged before commencement day);

- (b) a development approval mentioned in section 442B (Transitional—application for review lodged after commencement day for application lodged before commencement day);
 - (c) a development approval mentioned in section 442C (Transitional—development application lodged on or after commencement day for estate development plan given before commencement day);
 - (d) a development approval mentioned in section 443 (Transitional—applications for review not finally decided);
 - (e) a development approval mentioned in section 444 (Transitional—approvals under repealed Act).
- (2) Despite anything else in this part, the development approval commences, or is taken to have commenced, when the development approval would have commenced under the repealed Act if the repealed Act had not been repealed.

7 Schedule 5, new modification 5.5A

insert

[5.5A] Sections 446 and 446A

substitute

446 Power to make lease and development conditions

- (1) This section applies to land in relation to which—
- (a) an earlier application has been made and earlier approval given, whether the earlier approval is given before or after the commencement day; or

(b) development approval has been given under section 442C.

Note Under s 442C, if an estate development plan was considered before commencement of this Act, the repealed Act applies to the application for development approval.

(2) On and after the commencement day, the planning and land authority may make a lease and development condition in relation to the land, or part of the land.

(3) In this section:

defined land means land identified in the old territory plan for the repealed Act, subdivision 2.3.4.

earlier application means an application for development approval if the application—

- (a) was made under the repealed Act before the commencement day; and
- (b) relates to land that was defined land when the application was made; and
- (c) is for approval to subdivide land, whether or not it is also for approval of something else.

earlier approval means development approval under the repealed Act of an earlier application.

lease and development condition means a lease and development condition that could have been made under the repealed Act, but for its repeal.

old territory plan means the Territory Plan under the repealed Act.

(4) This section is a provision to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) does not apply.

(5) This section expires 5 years after the commencement day.

446A Transitional—application for development approval if lease and development condition

- (1) This section applies to a development application if the application is—
 - (a) not in the code track; and
 - (b) for development on land to which—
 - (i) a lease and development condition made under section 446 applies; or
 - (ii) a lease and development condition made under the repealed Act applied immediately before the commencement day.
- (2) The planning and land authority, or Minister, must consider the lease and development condition in making a decision under section 162 (Deciding development applications) in relation to the development application if—
 - (a) the territory plan provides that the condition may vary the plan; and
 - (b) the condition is relevant to assessing the application and granting the approval.
- (3) This section expires 5 years after the commencement day.

Endnotes

1 Notification

Notified under the Legislation Act on 30 June 2008.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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